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JAN 19 2006

OFFICE OF PETITIONS

In re Application of: :
Watabe et al. :
Application No. 10/775,862 : ON PETITION
Filed: February 10, 2004, :
Docket No.:1582.34 :

This is a decision on the petition filed November 15, 2005, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment.

The petition is dismissed. Any request for reconsideration of this decision must be filed within TWO MONTHS of this mailing. See 37 CFR 1.181(g). Extensions of this period under 37 CFR 1.136(a) are not available.

This application apparently became abandoned for failure to reply to the Office action of April 7, 2005, which set a shortened statutory period for reply of three months. As no reply was received and no extensions of time were received, the application became abandoned at midnight July 7, 2005.

Petitioner requests withdrawal of the holding of abandonment on the grounds that the Office action was never received at either the [obsolete] address to which it was mailed: Mason Law 17757 US 19 North Suite 500, Clearwater Florida, ("Mason") or at the above-captioned address which became effective January 1, 2005. Petitioner contends that a request for a change of correspondence address herein had been presented to the USPTO Electronic Business Center ("EBC") for association with customer number 24040 in late December 2004. Petitioner supplies copies of docket records where the non-received Office action would have been entered had it been received and statements from both firms that a review of the file jacket and docket records at both locations establishes that the last communication received from the USPTO for this application was a Notice Of Missing Parts that was replied to on May 14, 2004.

Initially, the Office action which was mailed to Mason, notwithstanding petitioner's assertion that a change of address was sent to the EBC in late December of 2004, actually appears to have

been mailed to the correct address. The undersigned has contacted the EBC for assistance in this matter. The EBC did receive 4 spreadsheets for customer number 24040 in late November and December of 2004, but is unable to find any spreadsheet listing 10/775,862. The spreadsheets were received November 29, 2004, December 15, 2004, and 2 were received on December 23, 2004, that had reports sent to counsel on January 13, 2005, January 20, 2005, February 2, 2005, and March 1, 2005, respectively. EBC has also confirmed that no notification was sent to counsel which indicated that a requested change of address for customer number 24040 that referenced this application could not be processed. Therefore, a copy of the spreadsheet that counsel sent to the EBC in late December 2004, that included this application number is requested for any renewed petition.

Accordingly, a review of the written record indicates no irregularity in the mailing of Office action of April 7, 2005, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to counsel at the Mason address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must consist of:

- (1) a first-hand statement from the practitioner stating that the action was not received by the practitioner,
- (2) his attestation to the fact that a search of the file jacket and docket records indicates that the Office action was not received, and
- (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioners' statement. See MPEP 711.03(c) subsection I.

It is further not clear that a copy of the docket records has been supplied. That is, the photocopies supplied from both addresses appear to actually correspond to the electronic *file jacket* records that are strictly limited to papers and tasks for this application, and are not indicative of all correspondence received at Mason or counsel's current address with a few days of the mailing of the office action of April 7, 2005. Further, the statement of Ms. Diane Miller is to the effect that any correspondence for this application received at Mason on and after the January 1, 2005, restructuring would have been re-mailed to counsel at the above-captioned address. Ms. Miller does not state that correspondence for counsel received at Mason on or about April 7, 2005, would also have been entered into the Mason file jacket and docket records. Thus the absence of any entry for this application in either the file jacket or, even if shown, the docket records, for this application at Mason is not dispositive. There is not adequate proof on non-receipt at Mason, and the Miller declaration, coupled with the showing at the above-captioned address also raises the possibility that the correspondence could have been lost either at Mason or in the remailing to the above-captioned address after its receipt at

Mason. It remains petitioner's burden to adequately establish non receipt of the April 7, 2005, Office action at the Mason address to which the correspondence was correctly mailed.

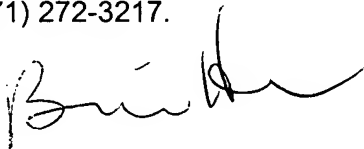
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Randolph Building 401 Dulany Street
 Alexandria, VA 22314:

By fax: (703) 872-9306
 ATTN: Office of Petitions

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-3217.

A handwritten signature in black ink, appearing to read "Brian Hearn", with a stylized flourish at the end.

Brian Hearn
Petitions Examiner
Office of Petitions